

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of  
PAUL ALBERT McCLELLAND.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Petitioner and Respondent,

v.

THERESA TORRICELLAS,

Objector and Appellant.

D074107

(Super. Ct. No. MH113510)

APPEAL from an order of the Superior Court of San Diego County, Margie G.

Woods, Judge. Appeal dismissed.

Suzanne Davidson, under appointment by the Court of Appeal, for Objector and Appellant.

Thomas E. Montgomery, County Counsel, David M. Stotland and Darin L.

Wessel, Deputy County Counsel, for Petitioner and Respondent.

This is an appeal in a conservatorship action brought under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5000 et seq.; further unidentified statutory references are to this code). Following proceedings in the superior court, the conservatee Paul Albert McClelland (Conservatee) appealed from an order of the court ratifying the acts of and retroactively reappointing the public conservator as conservator of the person of the Conservatee. During the pendency of the appeal, the Conservatee died, the court granted a motion by Theresa Torricellas to be substituted as a party to this appeal instead and in the place of the Conservatee, and the conservatorship terminated as a matter of law. As we explain, due to the death of the Conservatee and the termination of the conservatorship, the appeal is moot; and we decline to exercise our inherent discretion to decide the moot issues. Accordingly, we will dismiss the appeal.

## I. STATEMENT OF THE CASE<sup>1</sup>

On March 23, 2018, a prior conservatorship over the Conservatee was terminated. Based on the February 23, 2018 petition of Mark Sellers, Public Conservator (the Conservator), and a stipulation between counsel for the Conservator and counsel for the Conservatee, following hearing on May 1, 2018, the court ordered in part as follows (May 1, 2018 Order): Effective March 23, 2018, the Conservator is retroactively reappointed the conservator of the person of the Conservatee for one year, i.e., until

---

<sup>1</sup> We base this statement on the clerk's transcript, as augmented, and the reporter's transcript as designated by the parties.

March 23, 2019; letters of conservatorship shall issue accordingly;<sup>2</sup> the March 23, 2018 order terminating the prior conservatorship by operation of law is vacated; acts performed by the Conservator after March 23, 2018, are "ratified and approved"; the Conservator shall act as conservator until March 23, 2019; the Conservator shall have the power to place the Conservatee in a suitable institution, facility, home or environment; the Conservator shall have the power to require the Conservatee to receive mental health treatment related to his being gravely disabled as described in section 5358; the Conservator shall have the right to require the Conservatee to receive routine medical treatment unrelated to his being gravely disabled; the Conservatee shall not have the right to refuse placement when ordered by the Conservator; pursuant to section 5357, the Conservatee is not capable of completing an affidavit of voter registration and shall not have the privilege to possess a motor vehicle license or the rights to enter into contracts, to refuse or to consent to medical treatment (related or unrelated to his being gravely disabled), or to possess a firearm; the least restrictive placement for the Conservatee is an open treatment facility; and if the Conservatee is placed in a more restrictive placement, then the Conservator shall provide written notice to the court, the Conservatee's attorney, the county's patients' advocate, the Conservatee's wife (identified with contact information), and the Conservatee's friend (identified with contact information).

---

<sup>2</sup> On May 1, 2018, the clerk of the court issued letters of conservatorship.

Torricellas, who is not a lawyer, filed a notice of appeal from the May 1, 2018 Order, on behalf of the Conservatee.<sup>3</sup> In June 2018, this court appointed counsel for the Conservatee (Appointed Counsel), who promptly filed an amended notice of appeal as counsel for the Conservatee. The appeal was fully briefed as of mid-November 2018.

In February 2019, the court was notified of the Conservatee's death;<sup>4</sup> and, in March 2019, the court granted Torricellas's motion and substituted her as a party to the action in place of the Conservatee. On March 23, 2019, the conservatorship terminated by operation of law. (§ 5361 [an LPS conservatorship "shall automatically terminate one year after the appointment of the conservator by the superior court"]; *Conservatorship of George H.* (2008) 169 Cal.App.4th 157, 161, fn. 2 ["An LPS conservatorship automatically expires after one year"].) Consistently, the May 1, 2018 Order had appointed the Conservator only "for a one-year period ending 03/23/2019"; and, in the related letters of conservatorship, the Conservator's appointment remained in effect only "until 03/23/2018."

Based on the Conservatee's death and the termination of the conservatorship, the court requested and received separate supplemental briefing from the parties with regard

---

<sup>3</sup> The signature block on the notice of appeal contains the following handwritten entry: "(atty in fact) Theresa Torricellas (Daniel) agent for Paul Albert McClelland."

<sup>4</sup> Later documentation indicated that the Conservatee passed away on December 13, 2018.

to whether each of these events rendered the appeal moot and, if so, whether the appeal should be dismissed.<sup>5</sup>

## II. DISCUSSION

"The LPS Act governs the involuntary detention, evaluation, and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled." (*Conservatorship of John L.* (2010) 48 Cal.4th 131, 142 (*John L.*)). The purpose of an LPS conservatorship "is to provide individualized treatment, supervision, and placement" (§ 5350.1); and as applicable here, "[a] conservator of the person . . . may be appointed for a person who is gravely disabled as a result of a mental health disorder"<sup>6</sup> (§ 5350).

The procedures for establishing an LPS conservatorship include a number of procedural and due process requirements. (*John L.*, *supra*, 48 Cal.4th at p. 143.) As relevant to the present appeal, a proposed conservatee "shall have the right to demand a

---

<sup>5</sup> In our most recent request for supplemental briefing, we asked counsel to identify their client. Appointed Counsel responded, identifying the Conservatee—i.e., the person who had died more than six months earlier in December 2018—as her client. However, since we ordered Torricellas "substituted as a party to this action instead and in the place of [the Conservatee]" *as of March 26, 2019*, the Conservatee has not been a party since at least then (if not before, due to his death). Appointed Counsel has done nothing to relieve herself of her professional responsibilities in this appeal—and, indeed, has filed two substantive letter briefs since Torricellas replaced the Conservatee as the appellant in this appeal.

<sup>6</sup> In this context, " 'gravely disabled' " is statutorily defined to mean "[a] condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter" (§ 5008, subd. (h)(1)(A))—with the additional limitation that "a person is not 'gravely disabled' if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter" (§ 5350, subd. (e)(1)).

court or jury trial on the issue whether he or she is gravely disabled." (§ 5350, subd. (d)(1).) "The party seeking imposition of the conservatorship must prove the proposed conservatee's grave disability beyond a reasonable doubt, and a jury verdict finding such disability must be unanimous." (*John L.*, at p. 143.)

The Conservatee's opening brief argues that the May 1, 2018 Order should be reversed, because the trial court did not make a required finding—namely, that the Conservatee lacked the capacity to make a knowing and voluntary waiver of his right to a jury trial in the proceedings that reestablished his conservatorship. In his brief on appeal, the Conservator argues in relevant part that a conservatee may waive his right to a jury trial through counsel and that the record in this appeal supported the Conservatee's waiver through counsel. The Conservatee's reply brief disagrees with the Conservator's reading of the record on appeal and attempts to distinguish the caselaw on which the Conservator relies in his brief.

When, during the pendency of an LPS conservatorship appeal, an event occurs such that the appellate court cannot grant any effectual relief, the appeal becomes moot. (*Conservatorship of Joseph W.* (2011) 199 Cal.App.4th 953, 960 (*Joseph W.*), citing *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) "A court ordinarily will dismiss an appeal when it cannot grant effective relief[.]" (*In re David B.* (2017) 12 Cal.App.5th 633, 644 [juvenile dependency appeal]; see *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134 ["Ordinarily, of course, when a case becomes moot pending an appellate decision 'the court will not proceed to a formal judgment, but will dismiss the appeal.' "].) There are times, however, when the appellate court must

decide whether to dismiss the appeal or proceed to judgment nonetheless. (*Joseph W.*, at p. 961; *David B.*, at p. 644.)

In *Joseph W.*, for example, like the Conservatee here, the conservatee argued on appeal that the trial court erroneously denied him the right to a jury trial. (*Joseph W.*, *supra*, 199 Cal.App.4th at p. 960.) During the pendency of the conservatee's appeal in *Joseph W.*, the conservatorship terminated, which left our court unable to grant any effective relief—" 'technically' " mooting the appeal. (*Id.* at pp. 960-961.) Nonetheless, in that case, we exercised our " 'inherent discretion' " to consider the merits of the otherwise moot appeal, reasoning:

" 'Because a conservatorship is relatively brief (one year) in comparison with the appellate process, we find it likely that this issue . . . is one capable of recurring, yet of evading review because of mootness.' (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1011, fn. 5.) Because procedures for reestablishment of conservatorships 'are of great public interest' and a reestablishment issue 'could perpetually evade appellate scrutiny' (*Conservatorship of Moore* (1986) 185 Cal.App.3d 718, 725), we exercise our discretion to consider, and address the merits of, this appeal. (*Ibid.*; *Conservatorship of Rodney M.* (1996) 50 Cal.App.4th 1266, 1269, fn. 4 ['Although the [mootness] claim may be technically correct, we exercise our inherent discretion to decide the . . . issue, insofar as it is of significant public interest, is certain to recur in other cases, and may continue to evade review.']; *Conservatorship of Kevin M.* (1996) 49 Cal.App.4th 79, 86-87.)" (*Joseph W.*, at p. 961.)

As we explain, like *Joseph W.*, the present appeal is moot, but unlike *Joseph W.*, in the present case we decline to exercise our discretion to reach the merits.

#### A. *Death of Conservatee*

We begin with the understanding, based on guidance from our Supreme Court, that, when a conservatee dies during the pendency of an appeal, the appeal is moot.

(*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 524, fn. 1 (*Wendland*).) We have discretion, nonetheless, to decide issues in such moot cases where we are presented with "important issues that are capable of repetition yet tend to evade review." (*Ibid.*; accord, *Joseph W.*, *supra*, 199 Cal.App.4th at p. 961.)

Torricellas argues that the Conservatee's death did not moot the issues in this appeal, because they "are not personal in character and are not abated with his death." In so arguing, Torricellas conflates two independent issues: (1) whether an appeal is moot; and (2) whether the appellate court will exercise its discretion to consider the merits of a moot appeal. Based on the death of the conservatee, the issues *are* moot; yet despite the mootness, we have the discretion to reach the merits. (*Wendland*, *supra*, 26 Cal.4th at p. 524, fn. 1; *Joseph W.*, *supra*, 199 Cal.App.4th at p. 961.)

With regard to our decision whether to exercise our discretion to hear this appeal that became moot due to the Conservatee's death, Torricellas argues that we should reach the merits, because the appeal "raises [an] issue of general public interest that is capable of recurring yet evade[s] review because of mootness." According to Torricellas, because the issues in this appeal "are not personal in character," they "are not abated with [the Conservatee's] death"; i.e., they "continue to impact current and future conservatees." Torricellas relies on the fact that, at the time the trial court accepted the parties' stipulation to reestablish his conservatorship, "the court accepted the stipulations for five other conservatees to reestablish their conservatorships. [Citation to reporter's



transcript.<sup>7]</sup>" At part II.C., *post*, we consider whether, *despite the mootness of the appeal*, we should exercise our discretion to consider the merits nonetheless.

B. *Termination of Conservatorship*

We begin by ruling that, as a matter of law, on at least two independent statutory grounds, the conservatorship in this case has terminated. First, Probate Code section 1860, subdivision (a) expressly provides that a conservatorship is "terminated by the death of the conservatee"<sup>8</sup>—which, under this authority, means that the conservatorship in this case terminated as of December 13, 2018. Second, section 5361 expressly provides that an LPS conservatorship "shall automatically terminate one year after the appointment of the conservator by the superior court"—which, under this authority, means that the conservatorship in this case terminated as of March 23, 2019.

We continue with the understanding that, as we stated in *Joseph W.*, *supra*, 199 Cal.App.4th 953, where a conservatorship terminates during the pendency of an appeal, the appeal is " 'technically' " moot. (*Id.* at p. 961.)

---

<sup>7</sup> The cited portion of the reporter's transcript provides in full:  
"[Counsel for the Public Conservator]: Yes. Your Honor, the following are the stipulations that we're entering into: [¶] Item No. 1 is Jones; No. 2 is Ford; No. 5, Land; 7, *McClelland*; 8, Garcia; and 14, Aicher.  
"The Court: All right. Thank you. [¶] The stipulations are now noted on the record, and these parties will continue with a conservatorship being reestablished for the individuals named." (*Italics added.*)

<sup>8</sup> "The LPS Act provides that '[t]he procedure for establishing, administering *and terminating* [a] conservatorship under this chapter shall be the same as that provided' in those sections of the Probate Code that deal with probate conservatorships (§ 5350), unless the LPS Act provides otherwise. (§ 5350[, former subd. ](f)[, currently found at subd. (h)].)" (*Baber v. Superior Court* (1980) 113 Cal.App.3d 955, 961, *italics added.*)

Torricellas disagrees. She suggests that "the termination of the conservatorship does not render [the Conservatee's] appeal moot because it raises issues of general public interest and is an issue capable of recurring, yet evades review." Once again, Torricellas conflates two distinct issues—i.e., whether this appeal is moot, and whether we will exercise our discretion to consider the merits of the moot appeal. Based on the termination of the conservatorship, the issues *are* moot; yet, despite the mootness, we have the discretion to reach the merits. (*Joseph W.*, *supra*, 199 Cal.App.4th at p. 961.)

With regard to our decision whether to exercise our discretion to hear this appeal that became moot due to the termination of the conservatorship, Torricellas presents the same argument that she presented in response to the mootness determination based on the death of the Conservatee.

C. *Discretion to Hear Moot Appeal*

For the reasons that follow, we decline to exercise our inherent discretion to hear this moot appeal.

Initially, we reject Torricellas's suggestion that the issues raised in this appeal do not "just affect" the Conservatee. Although Torricellas argues that "[t]hese issues continue to impact current and future conservatees," she provides no authority in support of her position. To the contrary, in citing the only authority on which she relies—*In re Crossley* (1934) 1 Cal.2d 460—she appropriately precedes the citation with the introductory signal "Contra." In *Crossley*, the appellant died before disposition of the appeal from an order declaring the appellant " 'mentally incompetent and incapable of taking care of or managing her property' " and appointing a guardian of her estate. (*Id.* at

p. 460.) Under these circumstances, the Supreme Court dismissed the appeal, ruling that it "abated with the death of the [appellant]." (*Id.* at pp. 460-461.)

Furthermore, this is not a derivative or representative action or appeal in which the Conservatee was attempting to assert a claim or right on behalf of anyone other than himself. The issue in this appeal—according to the Conservatee's opening brief—is whether, *in this case and on this written and oral record*, "the trial court erred when it reestablished [the Conservatee's] conservatorship without first obtaining [*the Conservatee's*] *personal waiver* of his right to a jury trial . . . a finding that [he] lacked the capacity to make a knowing and voluntary waiver of his right." (Italics added.) As such, any resolution of the issues in the present appeal would be unlikely to provide guidance for future conservatorships, since the issues here are "essentially factual in nature" and must be resolved "on a case-by-case basis." (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 215 [court declined to exercise discretion to decide moot appeal].)

In the present case, we know that the court had continued the proceedings until the May 1, 2018 hearing expressly for the purpose of obtaining the necessary doctor's report *as to this Conservatee*. The reporter's transcript indicates that, at the time the court heard the Conservatee's matter, it also approved other conservatees' stipulations to waive a jury; however, the record in this appeal does not contain any information regarding the other conservatorships or the other conservatees who are mentioned in the transcript.

Finally, although we granted Torricellas's motion to be substituted as a party to the appeal in place of the Conservatee, in exercising our discretion, we are not convinced that

Torricellas is capable of, or should be allowed under any circumstances, to proceed with an appeal that may affect the rights of conservatees other than the party she replaced when, in fact, this appeal cannot affect the party she replaced. The underlying conservatorship has terminated, and due to the death of the Conservatee—unlike in *Joseph W.*, *supra*, 199 Cal.App.4th 953, and *all* of the other cited opinions in which courts have exercised their discretion to decide appeals that became moot due to the statutory termination of the LPS conservatorship—there is no possibility that there will ever be another LPS conservatorship of the person of the Conservatee.

### III. DISPOSITION

The appeal is dismissed.

IRION, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.